

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ALPS PROPERTY & CASUALTY  
INSURANCE COMPANY, a foreign insurer,

No. 3:21-cv-5766

**Plaintiff,**

VS.

## **COMPLAINT FOR DECLARATORY RELIEF**

RICHARD M. SIMPSON, an individual;  
SIMPSON LAW PLLC, a Washington  
Professional Limited Liability Company;  
LENNY NEAFUS, an individual; and LAKE  
WASHINGTON VIEW CEMETARY LLC, a  
Washington Limited Liability Company,

## Defendants.

## I. INTRODUCTION

1.1 This is an insurance coverage action seeking declaratory relief pursuant to 28  
U.S.C. §§ 2201 and 2202. ALPS Property & Casualty Insurance Company (ALPS) seeks a  
determination that it has no duty or obligation to defend or indemnify Richard M. Simpson or  
Simpson Law PLLC (collectively “Simpson”) under a policy of insurance issued by ALPS with  
respect to the claims brought against Simpson by Lenny Neafus and Lake Washington View  
Cemetery, LLC (collectively “Neafus”) in the matter entitled *Neafus, et. al. v. Simpson et. al.*,

1 King County Superior Court, Cause Number 21-2-06868-1 (hereinafter the “Underlying  
2 Lawsuit”).

3 **II. PARTIES**

4 2.1 Plaintiff ALPS Property & Casualty Insurance Company is a foreign insurance  
5 company organized under the laws of the State of Montana with its principal place of business  
6 in the State of Montana.

7 2.2 Defendant Richard Simpson is an attorney licensed to practice law in the State of  
8 Washington (WSBA #53162) and is a resident and citizen of the State of Washington.

9 2.3 Defendant Simpson Law PLLC is an administratively dissolved Washington  
10 Professional Limited Liability Company with a principal place of business in the State of  
11 Washington. The sole member of Simpson Law PLLC is Richard Simpson, who is a resident and  
12 citizen of the State of Washington.

13 2.4 Defendant Lenny Neafus is a resident and citizen of the State of Washington.

14 2.5 Defendant Lake Washington View Cemetery LLC is a Washington Limited  
15 Liability Company with a principal place of business in the State of Washington. All members  
16 of Lake Washington View Cemetery, LLC are residents and citizens of the State of Washington.

17 **III. JURISDICTION AND VENUE**

18 3.1 This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1332 because  
19 the amount in controversy exceeds \$75,000, exclusive of interests and costs, and diversity among  
20 the parties is complete.

21 3.2 Venue is proper with this Court pursuant to 28 U.S.C. § 1391 and local court rules  
22 as this case involves claims for insurance coverage under a policy of insurance issued in the State  
23 of Washington to an individual domiciled and doing business in the State of Washington.

## IV. FACTS

#### **A. The Underlying Matter**

4.1 In late 2018 or early 2019, Neafus hired Simpson to provide legal services and representation regarding an ongoing land use dispute involving the City of Renton.

4.2 Soon after Simpson was hired, Neafus and Simpson allegedly agreed to expand the scope of Simpson's representation to represent Neafus in a different component of that same land use dispute against Mt. Olivet Cemetery and its directors.

4.3 The alleged basis of Neafus' claim was that the opposing parties in the land use dispute were using land for business purposes on which Neafus had a dominant easement and for which he did not give permission.

4.4 From approximately February of 2019 onwards, Simpson allegedly represented Neafus in all aspects of the land dispute litigation with both the City of Renton and with Mt. Olivet Cemetery and its directors.

4.5 On February 11, 2019, Simpson allegedly sent a letter without the approval of Neafus to the Mt. Olivet Cemetery and its directors, asserting that the latter parties were burying bodies and selling cemetery plots on land that Neafus “owned”.

4.6 On February 26, 2019, Simpson filed a Complaint against Mt. Olivet Cemetery and its directors entitled *Neafus, et. al. v. Mt. Olivet Cemetery Co., Inc., et. al.*, King County Superior Court Cause No. 19-2-05602-9 (the “Land Use Lawsuit”).

4.7 On August 5, 2019, Simpson filed a Motion to Amend the Complaint to add the City of Renton as a defendant in the Land Use Lawsuit, as well as to add claims for damages. The motion was denied.

<sup>48</sup> On January 3, 2020, the defendants in the Land Use Lawsuit moved for summary

1 judgment, which Simpson allegedly failed to contest in a proper or timely manner.

2       4.9 On January 31, 2020, the King County Superior Court granted the Motion for  
3 Summary Judgment and dismissed the Land Use Lawsuit with prejudice, finding that Neafus  
4 could present no evidence that he owned the land in question, nor that there had been any burials  
5 on land which he owned or had an easement upon.

6       4.10 In the immediate aftermath of the Court's ruling, Neafus allegedly verbally  
7 terminated Simpson as his counsel and retrieved his papers from him, but Simpson did not  
8 subsequently file a Notice of Withdrawal in the matter until several months later.

9       4.11 On February 28, 2020, Defendants in the Land Use Lawsuit filed a Motion for  
10 Sanctions and Fees, which Simpson allegedly received as Neafus' counsel of record but did not  
11 communicate to Neafus.

12       4.12 On March 2, 2020, Simpson filed a Response to the Defendants' Motion for  
13 Sanctions and Fees allegedly without telling Neafus he had done so.

14       4.13 On April 13, 2020, the King County Superior Court issued its Findings of Fact  
15 and Conclusions of Law on the Defendants' Motion for Fees and Sanctions, finding Neafus'  
16 claims to be frivolous, illegitimate, and ultimately intended to "harass, vex, and annoy" the  
17 Defendants.

18       4.14 The Court further found that Simpson's conduct during the litigation was  
19 "improper, not appropriate, and...below the standard this Court expects of the Washington State  
20 Bar", specifically singling out Simpson's attempts to "coerce" a settlement from Defendants by  
21 threatening to publicly attack their reputations and those of their witnesses in such a manner as  
22 to get them fired from their jobs, filing for CR 11 sanctions against the Defendants, and  
23 threatening to prepare and file a class action lawsuit against the defendants for at least

1 \$10,000,000 and potentially report the Defendants to the Federal Bureau of Investigation if they  
2 did not agree to settle on terms favorable to Neafus.

3       4.15 The Court entered an Order sanctioning Simpson pursuant to CR 11 in the amount  
4 of \$2,500 as well as \$1,966.77 in court fees, with attorney costs to be determined pending the  
5 submission of accurate fee declarations.

6       4.16 On April 14, 2020, Simpson notified Neafus of the Motion for Sanctions and Fees  
7 allegedly for the first time.

8       4.17 On April 16, 2020, Simpson drafted a Motion for Reconsideration on the Court's  
9 Findings of Fact and Conclusions of Law, which Neafus allegedly told Simpson not to file.  
10 Simpson filed the motion on April 22, 2020.

11      4.18 On April 29, 2020, Simpson filed a Notice of Withdrawal from representing  
12 Neafus.

13      4.19 On May 22, 2020, the King County Superior Court denied the Motion for  
14 Reconsideration and assigned the total amount of attorney's fees and costs determining that  
15 Neafus and Simpson were jointly and severally responsible for \$86,712.00 in CR 11 sanctions,  
16 which when added to the \$1,966.77 already imposed, totaled \$88,678.77.

17      4.20 On July 10, 2020, Simpson purchased a policy of insurance from ALPS Property  
18 & Casualty Insurance Company, Policy Number ALPS23468-2 (hereinafter "the Subject  
19 Policy").

20      4.21 In his application for the Subject Policy, Simpson answered "No" to the question  
21 "After inquiring with all members of the Firm, is any attorney or employee in the Firm aware of  
22 or have knowledge of any fact, circumstance, act, error, or omission that could reasonably be the  
23 basis of a claim against any current or former attorney, in the firm or its predecessors, regardless

1 of the merit of such claim?"

2       4.22 Upon information and belief, Neafus paid the fees and costs/CR 11 sanction  
3 amount of \$88,678.77, plus interest, for a total of \$90,365.56 in full on August 20, 2020,  
4 satisfying the judgment.

5       4.23 On May 25, 2021, Neafus filed the Underlying Lawsuit against Simpson claiming  
6 that Simpson committed malpractice, breach of fiduciary duty and violation of the Washington  
7 Consumer Protection Act.

8       4.24 Neafus claims that he is entitled to damages sustained as a result of Simpson's  
9 alleged malpractice, all damages sustained by him as a result of Simpson's alleged breaches of  
10 fiduciary duty, all damages sustained by him as a result of Simpson's alleged breaches of the  
11 Consumer Protection Act including treble damages to be limited at \$25,000 per breach,  
12 disgorgement or forfeiture of all fees paid by Neafus to Simpson, all interest, attorney's fees,  
13 costs, and other relief as the Court would deem equitable.

14       4.25 Simpson first notified and tendered the Underlying Lawsuit to ALPS seeking  
15 defense and indemnity under the Subject Policy on June 2, 2021.

16       4.26 ALPS sent a Reservation of Rights letter on June 11, 2021 advising that it would  
17 defend Simpson in the Underlying Lawsuit pursuant to a full reservation of rights.

18 **B. The Subject Policy**

19       4.27 The Subject Policy contains the following Insuring Agreement:

20           A. COVERAGE

21           Subject to the **Limit of Liability**, exclusions, conditions and  
22 other terms of this **Policy**, the **Company** agrees to pay on  
behalf of the **Insured** all sums (in excess of the **Deductible**  
23 amount) that the **Insured** becomes legally obligated to pay  
as **Damages**, arising from or in connection with A **CLAIM**  
FIRST MADE AGAINST THE **INSURED** AND FIRST

1 REPORTED TO THE **COMPANY** DURING THE  
2 **POLICY PERIOD**, provided that all of the following  
3 conditions are satisfied:

4

5 1. The **Claim** arises from a **Wrongful Act** that occurred  
6 on or after the **Retroactive Coverage Date** set forth  
7 in Item 2 of the **Declarations**;

8 2. At the **Effective Date** of this **Policy**, no **Insured**  
9 knew or reasonably should have known or foreseen  
10 that the **Wrongful Act** might be the basis of a  
11 **Claim**; . . .

12 4.28 The Subject Policy contains the following Definitions pertinent to the above-  
13 described Insuring Agreement:

14 C. **Claim** means a demand for money or services including, but  
15 not necessarily limited to, the service of suit or institution of  
16 arbitration or alternative dispute resolution proceedings  
17 against the **Insured**.

18 H. **Damages** means any:

19 1. Monetary award by way of judgment or final  
20 arbitration, or any settlement; and  
21 . . .

22 **Damages** does *not* mean *nor* include any:  
23 . . .

24 3. Punitive, multiple, or exemplary damages, fines,  
25 sanctions, penalties or citations, including, without  
26 limitation, any consequential or incidental damages,  
27 attorney's fees or costs, or pre-judgment or post-  
28 judgment interest resulting therefrom, regardless  
29 against whom the same are levied or imposed and  
30 regardless of whether the same were levied or  
31 imposed in a separate matter or proceeding;

32 4. Awards deemed uninsurable by law;

33 5. Injunctive, declaratory, or other equitable relief, or  
34 costs or fees incident thereto;

- 1       6. Restitution, reduction, disgorgement or set-off of any  
2 fees, costs, consideration or expenses paid to or  
3 charged by an Insured, or any other funds or property  
4 of any person or entity presently or formerly held or  
5 in any manner directly or indirectly controlled by an  
6 Insured;
7. Injury or damage to, destruction of, loss of, or loss of  
5 use of any funds or property; or  
6     ...

Y. **Professional Services** means services or activities performed  
7 for and on behalf of the **Named Insured or a Predecessor**  
8 **Law Firm** and rendered solely to others as:

- 1       1. An **Attorney** in an attorney-client relationship on  
2 behalf of one or more clients applying the **Attorney's**  
3 specialized education, knowledge, skill, labor,  
4 experience and/or training, including pro bono  
5 services;  
6     ...

BB. **Wrongful Act** means an actual or alleged:

- 1       1. Act, error or omission in **Professional Services** that  
2 were or should have been rendered by the **Insured**; .  
3     .

4.29 The Subject Policy also contains that following provisions relating to the limits of  
5 liability:  
6

E. EXHAUSTION OF LIMIT OF LIABILITY AND TENDER  
7 OF REMAINING LIMIT OF LIABILITY  
8

19 The **Company**'s duty to defend shall be fully satisfied, and  
20 the **Company** shall not be obligated to continue to defend  
21 any **Claim** or pay any **Claim Expenses**, nor be obligated to  
22 pay any **Damages**, or interest thereon, after:

- 21       1. The applicable **Limit of Liability** has been  
22 exhausted by payments of **Damages** and/or **Claim  
Expenses**; or
- 23       2. The **Company** has deposited an amount equal to the  
applicable **Limit of Liability**, minus any **Damages**

1 paid on the **Claim** and any **Claim Expenses** paid on  
2 the **Claim** and chargeable against the **Limit of**  
3 **Liability**, with a court of competent jurisdiction, to  
4 be disbursed by the court's order.

5 In either such case, the **Company** shall have the right to  
6 withdraw from further defense of the **Claim** by tendering  
7 control of the defense to the **Insured**. The **Insured** agrees,  
8 as a condition to the issuance of this **Policy**, to accept such  
9 tender.

10 4.30 The Subject Policy contains the following Definition applicable to the foregoing

11 Exhaustion provision:

12 D. **Claim Expenses** means:

13 1. Fees charged by any attorney(s) designated by the  
14 **Company** to defend a **Claim** or otherwise represent  
15 an **Insured**;

16 2. All other fees, costs, and expenses resulting from the  
17 investigation, adjustment, defense, and appeal of a  
18 **Claim** (including a suit or proceeding arising in  
19 connection therewith), if incurred by the **Company**,  
20 or if incurred by the **Insured** with the prior written  
21 consent of the **Company**; and

22 3. Any supplementary payments incurred or  
23 reimbursed by the **Company** under Section 1.D.

24 **Claim Expenses** does *not* mean *nor* include:

25 4. Salaries or other compensation of regular employees  
26 or officials of the **Company** or the **Named Insured**;  
27 or

28 5. Premiums for any supersedeas, appeal, attachment or  
29 other similar bond and the **Company** shall have no  
30 obligation to apply for, furnish or issue such bond.

31 4.31 The Subject Policy contains the following Exclusions:

32 SECTION 3 – EXCLUSIONS

1           **THIS POLICY DOES NOT APPLY TO ANY CLAIM ARISING**  
2           **FROM OR IN CONNECTION WITH:**

3           A. Any dishonest, fraudulent, criminal, malicious, or  
4           intentionally wrongful or harmful act, error or omission  
5           committed by, at the direction of, or with the consent of an  
6           **Insured**, or any **Personal Injury** arising from or in  
7           connection with such conduct, subject to Section 6.A.  
8           ("innocent insured coverage");  
9  
9           E. Any **Wrongful Act** that occurred prior to the **Effective Date**  
10          of this **Policy**, if:  
11  
11          1. The **Wrongful Act** occurred in the course of services  
12          or activities performed for a firm other than the  
13          **Named Insured**, and there is another policy of  
14          professional liability insurance that provides  
15          coverage for the **Claim**, regardless of the amount, if  
16          any, of the available limits of liability of the other  
17          policy, and regardless of whether or not the  
18          deductible provisions or limits of liability of the other  
19          policy are different from those of this **Policy**;  
20  
20          2. There is an earlier-incepting policy of professional  
21          liability insurance that provides coverage for the  
22          **Claim**, or would have provided coverage for the  
23          **Claim** if the **Insured's** obligations under that policy  
24          had been complied with, regardless of the amount, if  
25          any, of the available limits of liability of the prior  
26          policy, and regardless of whether or not the  
27          deductible provisions or limits of liability of the prior  
28          policy are different from those of this **Policy**; or  
29  
29          3. Prior to the **Effective Date** of this **Policy**, any  
30          **Insured** gave or should have given to any insurer,  
31          notice of a **Claim** or potential **Claim** arising from or  
32          in connection with the **Wrongful Act**, or from any  
33          **Wrongful Act** that is connected temporally,  
34          logically or causally, by any common fact,  
35          circumstance, situation, transaction, event, advice or  
36          decision to the **Claim** or potential **Claim**.

37          4.32 The Subject Policy contains the following General Conditions:

38          B. INSURED'S OBLIGATIONS UPON NOTICE OF CLAIM  
39          OR POTENTIAL CLAIM

1           1. When an **Insured** becomes aware of a **Wrongful Act** that  
2           could reasonably be expected to be the basis of a **Claim**,  
3           but no **Claim** arising therefrom has yet been made, then  
4           as a condition precedent to the **Company**'s obligation to  
5           defend or indemnify the **Insured** under this **Policy**, the  
6           **Insured** shall immediately give written notice to the  
7           **Company**. Such notice shall include the fullest  
8           information obtainable concerning the potential **Claim**.  
9           The **Insured** must deliver written notice to the **Company**  
10          in accordance with the CLAIMS MADE AND  
11          REPORTED POLICY paragraph set forth on page 1 of  
12          this **Policy**."

8           K. STATEMENTS IN DECLARATIONS AND APPLICATION

9           By acceptance of this **Policy**, each **Insured** agrees with, represents  
10          to and assures the **Company** that the statements, information and  
11          representations in the **Declarations**, in the application for this  
12          **Policy**, and in the applications for each prior policy issued by the  
13          **Company** to the **Insured**, are true and correct, that the **Declarations**  
14          and the application form a part of this **Policy**, and that this **Policy** is  
15          issued in reliance upon the truth of such statements, information and  
16          representations.

17          4.33 ALPS reserves the right to assert any other policy language or policy coverage  
18          documentation that may be potentially applicable to the claims asserted by Neafus against  
19          Simpson arising out of the subject matter.

16          **V. THERE IS AN ACTUAL AND JUSTICIABLE CONTROVERSY AS TO ALPS'**  
17          **COVERAGE OBLIGATIONS UNDER THE POLICY**

18          5.1 There is no coverage available to Simpson, his marital community, or to Simpson  
19          Law PLLC for the claims arising out of the Underlying Lawsuit.

20          5.2 The Policy provides coverage for all sums (in excess of the Deductible amount)  
21          that the Insured becomes legally obligated to pay as Damages, arising from or in connection with  
22          a claim first made against the insured and first reported to the company during the policy period,  
23          provided that the Claim arises from a Wrongful Act that occurred on or after the Retroactive

1 Coverage Date, that no Insured knew or reasonably should have known or foreseen that the  
2 Wrongful Act might be the basis of a Claim.

3       5.3     The Policy defines “damages” to include a monetary award of damages, but  
4 specifically excludes punitive or exemplary damages, sanctions, attorney’s fees or costs,  
5 disgorgement or set-off of attorney’s fees, and other such damages.

6       5.4     There is an actual and justiciable controversy as to whether the relief requested  
7 in the Underlying Lawsuit constitutes covered “damages” as that term defined.

8       5.5     The Policy provides coverage for Damages that the insured is legally liable for a  
9 Wrongful Act. The Policy defines Wrongful Act to include any error in the rendering or failure  
10 to render Professional Services. The Policy defines Professional Services to include the insured’s  
11 practice of law for a client.

12       5.6     There is an actual and justiciable controversy as to whether the claims against  
13 Simpson in the Underlying Lawsuit involve allegations of Wrongful Acts in the rendering or  
14 failure to render Professional Services as those terms are defined.

15       5.7     The Policy provides coverage for claims first made against the insured during the  
16 policy and first reported to ALPS during the policy period.

17       5.8     There is an actual and justiciable controversy as to whether the claims asserted  
18 against Simpson in the Underlying Lawsuit were first made and reported during the ALPS policy  
19 period.

20       5.9     The Policy provides coverage for Damages caused by a Wrongful Act, provided  
21 that prior to the inception of the Policy no insured knew nor reasonably should have known or  
22 foreseen that a Wrongful Act might be the basis of a Claim.

23       5.10    There is an actual and justiciable controversy as to whether Simpson knew or

1 should have known or foreseen that he had committed Wrongful Acts which might result in a  
2 Claim prior to the inception of the Subject Policy.

3       5.11 The Policy provides that ALPS' duty to defend is fully satisfied upon exhaustion  
4 of the Limit of Liability through payment of Damages or claim expenses. The Policy defines  
5 "Claim Expenses" to include payment of attorney's fees and litigation costs associated with the  
6 defense of Simpson in the Underlying Lawsuit.

7       5.12 There is an actual and justiciable controversy as to whether ALPS' duty to defend  
8 will cease upon the exhaustion of the limit of liability through payment of Damages or Claim  
9 Expenses.

10       5.13 The Policy specifically excludes coverage for damages arising from any  
11 dishonest, fraudulent, criminal, malicious, or intentionally wrongful or harmful act, error, or  
12 omission.

13       5.14 There is an actual and justiciable controversy as to whether the claims asserted  
14 against Simpson in the Underlying Lawsuit include dishonest, fraudulent, criminal, malicious, or  
15 intentionally wrongful or harmful acts.

16       5.15 The Policy specifically excludes coverage for any Wrongful Act that occurred  
17 prior to the inception of the Policy, if any Insured gave or should have given to any insurer, notice  
18 of a Claim or potential Claim arising from or in connection with the Wrongful Act, or from any  
19 Wrongful Act that is connected temporally, logically or causally, by any common fact,  
20 circumstance, situation, transaction, event, advice or decision to the Claim or potential Claim.

21       5.16 There is an actual and justiciable controversy as to whether the claims against  
22 Simpson in the Underlying Lawsuit involve Wrongful Acts that were or should have been  
23 reported to any insurer or which were temporally and logically connected to a Claim or potential

1 | Claim.

2        5.17 The Policy requires that an insured immediately give written notice to ALPS of a  
3 Wrongful Act that could reasonably be expected to be the basis of a claim for malpractice against  
4 the Insured as a condition precedent to ALPS defending or indemnifying the claim.

5        5.18 There is an actual and justiciable controversy as to whether Simpson complied  
6 with the notice conditions of the subject Policy when he failed to immediately give written notice  
7 to ALPS of the Wrongful Acts forming the basis of the Underlying Lawsuit upon his purchase  
8 of the subject Policy.

9        5.19 The Policy requires that the insured party agrees with, represents to, and assures  
10      ALPS that the statements, information, and representations in the Declarations, in the application  
11      for the Policy, and in the applications for each prior policy issued by ALPS to the insured party,  
12      are true and correct.

13        5.20 There is an actual and justiciable controversy as to whether Simpson submitted  
14 true and correct information when he assured ALPS that he did not have any knowledge of any  
15 fact, circumstance, act, error, or omission which could reasonably be expected to be the basis of  
16 a claim against him when he applied for the Policy on July 10, 2020.

17        5.21 ALPS reserves the right to assert any other exclusions or grounds for which  
18 coverage for the claims against Simpson and Simpson Law PLLC may be excluded under the  
19 policy.

## **VI. FIRST CAUSE OF ACTION – DECLARATORY RELIEF**

21       6.1     ALPS is entitled to Declaratory Judgment in its favor, specifically including a  
22 judicial determination as to its defense and indemnity obligations to Simpson, his marital  
23 community, and to Simpson Law PLLC under the policy of insurance issued by ALPS for the

1 claims alleged in the Subject Lawsuit.

2 **VII. PRAYER FOR RELIEF**

3 ALPS, having alleged the foregoing, does now hereby pray for relief as follows.

4 7.1 For a declaration that ALPS owes no defense obligation to Simpson, to his marital  
5 community, or to Simpson Law PLLC for any claims arising from the Subject Lawsuit.

6 7.2 For a declaration that ALPS owes no indemnity obligation to Simpson, to his  
7 marital community, or to Simpson Law PLLC for any claims arising from the Subject Lawsuit.

8 7.3 For all interest allowed by law.

9 7.4 For attorney fees and costs allowed by statute and law.

10 7.5 For other and further relief as the Court deems just and equitable.

11 DATED this 15th day of October, 2021.

12 LETHER LAW GROUP

13 /s/ Thomas Lether

Thomas Lether, WSBA #18089

14 /s/ Eric J. Neal

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